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Supreme Court, U.S.

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No. 21-_____

IN THE

Supreme Court of the United States

OCTOBER TERM, 2021

STEPHEN CAMERON ZYSKIEWICZ

Petitioner,

v.

THE STATE OF CALIFORNIA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE CALIFORNIA FIFTH DISTRICT
COURT OF APPEAL

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Petitioner sold marijuana ostensibly as part of a California state legal nonprofit cannabis collective and possessed mescaline, ostensibly as a member of a Native American Church, though the trial court forbid this evidence at trial.

1. Whether there is a conflict of state and federal law with regards to marijuana/hashish and/or mescaline.
2. Whether or not was an error in forbidding evidence of a legal nonprofit medical cannabis collective and bonafide religious use of cannabis/mescaline as a member of a Native American Church.
3. Whether or not marijuana/hashish/mescaline should even be considered criminal activity at all given that the Controlled Substances Act is unconstitutional, given the threat to freedom of religion, constitutional violations related to First, Fourth, Eighth, Fourteenth (Equal Protection Clause).
4. Whether or not marijuana/hashish is a schedule I controlled substance (no medicinal value).
5. Whether or not mescaline is a schedule I controlled substance (no medicinal value).
6. Whether or not the Controlled Substances Act, the War on Drugs, and cannabis/mescaline prohibition are unconstitutional.

PARTIES TO THE PROCEEDINGS

All parties appear in the caption of the case on the cover page.

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**ON PETITION FOR A WRIT OF
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DISTRICT COURT OF APPEAL**

PETITION FOR A WRIT OF CERTIORARI

Petitioner Stephen Cameron Zyszkiewicz respectfully petitions for a writ of certiorari to review the judgment of the California Fifth District Court of Appeal.

OPINIONS BELOW

The opinion of the California Fifth District Court of Appeal Fo78532 (May 6, 2021), and is attached hereto as Appendix B. The order denying petition for review to California Supreme Court S269276 (July 28, 2021) is attached hereto

as Appendix A. Reporter's Transcript of Sentencing Fresno Superior Court (December 10, 2018) is attached hereto as Appendix C. Statement of Justice Thomas Standing Akimbo, LCC. v. United States, No 19-1049 (10th Cir. 2020). is hereto attached as Appendix D.

STATEMENT OF JURISDICTION

The California Fifth District Court of appeal entered its decision affirming Petitioner's conviction on May 6, 2021. The California Supreme Court denied petition for review on July 28, 2021. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

STATUTORY PROVISIONS INVOLVED

28 U.S.C. 812 (b): finding marijuana/hashish/mescaline as a high potential for abuse, no currently accepted medical use, lack of accepted safety for the use of the drugs.

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the Constitution provides in relevant part: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

The Fourteenth Amendment to the Constitution provides in relevant part: "No State shall . . . deprive any person of life, liberty, or property without due process of law." U.S. Const. amend. XIV.

The Fourth Amendment to the Constitution provides in relevant part: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The Eighth Amendment to the Constitution provides in relevant part: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

The Equal Protection Clause of the Fourteenth Amendment to the Constitution provides "nor shall any State . . . deny to any person within its jurisdiction the equal protection of the laws".

INTRODUCTION

Petitioner was sentenced to three years in California state prison for opening and maintaining a place for sale/use of marijuana, hashish, and mescaline (California Health and Safety Code 11366).

Despite the fact that the petitioner ostensibly believed marijuana/hashish to be legal and wanted to provide evidence of a nonprofit legal medical cannabis collective under state law, the trial court forbade this evidence.

Despite the fact that the petitioner ostensibly believed mescaline (and cannabis) to be legal to possess for religious purposes, the trial court forbade evidence of religious and medical use.

This case is the perfect case for at least one level of the government (the judicial branch of the federal government) to make a decision about whether marijuana/hashish/mescaline can even be considered a criminal act at all, while the defendant represents a growing segment of the population openly possessing cannabis or mescaline for religious or medical use.

The petitioner has gone to great lengths to live in the proper state (California) and file the correct forms to do legal cannabis business, only to instead be criminally prosecuted, incarcerated, and needing to file court forms which are even more complicated for the layman than the paperwork to obtain a doctor's recommendation for cannabis, state cannabis card.

Prosecuting and incarcerating one person (the petitioner) while openly allowing personal possession and "legal" large-scale cannabis businesses at the state and federal level goes against the Equal Protection Clause of the Fourteenth Amendment.

Petitioner has separately petitioned the DEA to deschedule cannabis on multiple occasions, as well as the D.C. Circuit Court of Appeals which were denied by the DEA and the Court. Additionally, the petition as been used in Sisley v. DEA (20-71433) which was denied in the 9th Circuit Court of Appeals.

Even Justice Clarence Thomas has mentioned the federal government's contradictory laws in *Standing Akimbo, LLC. v. United States* No 19-1049 (10th Cir. 2020).

STATEMENT OF THE CASE

On December 10, 2018, Petitioner Stephen Cameron Zyszkiewicz was sentenced to three years in California State Prison for opening and maintaining a place for sale/use of marijuana, hashish and mescaline. The petitioner ostensibly believed the marijuana/hashish to be part of a legal nonprofit medical cannabis collective and the mescaline to be possessed for religious use as a member of a Native American Church. The record shows that the mescaline was a small amount less than 1 gram and the marijuana/hashish was of an enormous amount.

The petitioner ostensibly never meant to do anything criminal but was met with the harshest punishment for the crime, 3 years in California State Prison. It is well known that California has a history of legalizing cannabis, first for medicinal use in Compassionate Use Act of 1996 (CUA) and again for Adult Use of Marijuana Act in 2016 (AUMA). Despite this, nonprofit collectives (under CUA) are only a legal defense in court and do not prevent criminal charges from being filed. Under AUMA, cities and counties can ban the sale of marijuana, while possession of small amounts is allowed, which presents another question of Equal Protection and creates an open tolerated black market for marijuana in the banned cities/counties.

The petitioner ostensibly wanted to follow the law and operate a legal collective and possess mescaline for religious purposes as a member of a Native American Church.

REASONS FOR GRANTING THE PETITION

I. THE U.S. SUPREME COURT JUSTICE THOMAS' STATEMENT QUESTIONS IF PROHIBITION OF CANNABIS IS NECESSARY.

The state court's decision merits review by this Court to resolve an important question as to whether prohibition of cannabis is necessary (Statement of Justice Thomas Standing Akimbo, LLC v. United States, No. 19-1049 (10th Cir. 2020)).

The government has created a piecemeal approach to cannabis in different states as well as within states like California that prohibit cannabis like the City of Clovis and County of Fresno while allowed in the City and County of San Francisco.

The government and the courts have created an unconstitutional war on drugs which cannot even be solved by partially legalizing cannabis in California and then prohibiting and criminalizing it the same way as in the past when cannabis was illegal (and schedule I).

II. THE U.S. SUPREME COURT HAS NOT HAD THE OPPORTUNITY SINCE THE LEARY CASE TO DECIDE ON THE CONSTITUTIONALITY OF THE CONTROLLED SUBSTANCES ACT ITSELF AT LEAST WITH REGARDS TO CANNABIS AND MESCALINE.

The decision of the U.S. Supreme Court in *Leary v. United States* 395 U.S. 6 (1969) was to declare the marihuana tax act unconstitutional. However, Congress placed the unconstitutional Controlled Substances Act in its place.

Even a person who wishes to obtain reasonable cannabis business licensing or present a medical or religious defense to cannabis or mescaline crimes cannot do so reasonably and is instead criminalized.

III. CANNABIS AND MESCALINE DO NOT MEET THE CRITERIA FOR SCHEDULE I SUBSTANCES UNDER 28 U.S.C. 812 (THE CONTROLLED SUBSTANCES ACT).

Under 28 U.S.C. 812, marijuana, hashish, and mescaline should all be descheduled for medicinal and religious use and no longer a criminal act.

IV. THE CONTROLLED SUBSTANCES ACT AND THE WAR ON DRUGS ITSELF IS UNCONSTITUTIONAL

The First Amendment provides freedom of religion, the Fourth Amendment provides the right of the people to be secure in their persons, the Eighth Amendment provides against cruel and unusual punishment. Equal Protection provides that a governmental body may not deny equal protection of its governing laws.

The basic definition of felony and crime should come into question here as petitioner never wronged anyone or brought danger or harm to anyone.

CONCLUSION

The petition for a writ of certiorari should be granted.

Dated: October 25, 2021

Respectfully submitted,



STEPHEN CAMERON ZYSZKIEWICZ